

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 847 of 2001

1. Mangal Sai, S/o Pisadu, Aged About 36 Years R/o Nayapara, Ungelras, Tehsil and Distt. Dantewada, Chhattisgarh.
2. Firangraj, S/o Channiram Halba, Aged About 20 Years, R/o Patel Para, Kanvalnaar, Tehsil and Distt. Dantewada, Chhattisgarh.
3. Chandulal, S/o Veer Singh, Aged About 20 years, R/o Patel Para, Kanvalnaar, Tehsil and Distt. Dantewada, Chhattisgarh.

---- Appellants

Versus

- State Of Chhattisgarh Through District Magistrate, Dantewada Chhattisgarh.

---- Respondent

For Appellants	:	Mr. Prafull N. Bharat and Mr. Keshav Dewangan, Advocates.
For Respondent/State	:	Mr. HS Ahluwalia, Dy. A.G.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

25/02/2021

1. By the impugned judgment dated 13/08/2001 passed in S.T. No. 376/2000 by the Learned Special Judge (SC & ST Prevention of Atrocities) Act and Additional Sessions Judge, Jagdalpur (C.G.), the Appellants has been convicted for offence punishable under Section 376 (2)(g) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 3,000/-, with default stipulation.
2. It has been reported that Appellant No. 1 Mangal Sai was released from jail on 12.05.2008 after completion of entire jail sentence imposed

upon him by the Trial Court. Looking to the above, Learned Counsel for the Appellants does not want to press the appeal with regard to Appellant No. 1 namely Mangal Sai.

3. Accordingly, the instant appeal is dismissed as not pressed with regard to Appellant no. 1 namely Mangal Sai.
4. According to the case of prosecution, at the time of incident, the prosecutrix (PW-1) was aged about 18 years. On 16.08.2000 at around 7 PM when she was returning along with Laxmi (PW-2) and Mangli Bai (PW-4) to her home from weekly market on way, allegedly, all the Appellants reached there and firstly Appellant No. 1 caught the prosecutrix and dragged her to nearby forest. Laxmi (PW-2) and Mangli Bai (PW-4) tried to rescue her, allegedly, Appellant Nos. 2 and 3 namely Firangraj and Chandulal threatened them of dire consequences, therefore, they afraid and returned to their home. It was further alleged that thereafter all the Appellants committed rape upon the prosecutrix. After returning home, the prosecutrix narrated the entire story to her brother and sister-in-law. On the next day of the incident FIR has been lodged vide (Ex. P-3). The prosecutrix was medically examined by Dr. Smt. Shirin Dhagamvar (PW-6) her report is (Ex. P-2). It was opined by the Doctor that forcible sexual intercourse was committed with the prosecutrix. During course of investigation, test identification parade of Appellant Nos. 2 and 3 was also conducted by G.R. Kulhara (PW-5) Tehsildar, they were duly identified by the prosecutrix. Statement of the prosecutrix and other witnesses recorded under Section 161 of Cr.P.C. After completion of investigation, charge-sheet was filed under Section 376 (2)(g) of the IPC. To prove the guilt of the Appellants, the prosecution has examined as many as 8

witnesses. No defense witness has been examined. Statements of the Appellants under Section 313 of the Cr.P.C. were recorded, wherein they have pleaded their innocence and false implication in the matter.

5. After trial, all the Appellants were convicted and sentenced by the Trial Court as mentioned in paragraph one of this judgment. Hence, this appeal.
6. Learned Counsel for the Appellants submit that in FIR (Ex. P-3) only the name of Appellant No. 1 Mangal Sai is mentioned. Appellant Nos. 2 and 3 were identified by the prosecutrix during test identification parade but, from the statement of the prosecutrix (PW-1) and G.R. Kulhara (PW-5) Tehsildar, it appears that before TIP the prosecutrix and Appellant Nos. 2 and 3 were sitting together before the office of G.R. Kulhara (PW-5) Tehsildar and the prosecutrix had seen both of them before the TIP, therefore, whole TIP proceeding is doubtful. Hence, only on the basis of identification of Appellant Nos. 2 and 3 before Court, conviction is not sustainable. A reliance has been placed upon the judicial illustration of **AIR 1998 Supreme Court 1922, Shaikh Umar Ahmed Shaikh and another v. State of Maharashtra.**
7. Learned Counsel for the State opposes the arguments advanced by learned Counsel for the Appellants and submits that apart from the prosecutrix (PW-1), Laxmi (PW-2) has also identified Appellant Nos. 2 and 3 in the Court. Both of them have categorically stated that these Appellants had dragged the prosecutrix to jungle and committed rape there upon her. The above statement of Laxmi (PW-2) has not been rebutted during her cross-examination. There is nothing on record on

the basis of which it can be said that before the TIP, the prosecutrix had seen Appellant Nos. 2 and 3. Referring the statement of G.R. Kulhara (PW-5) Tehsildar, it is argued by the State Counsel that at the time of TIP, both Appellant Nos. 2 and 3 were brought before him in covered(*Baparda*) condition. Therefore, it can't be said that the prosecutrix had seen Appellant Nos. 2 and 3 before the TIP.

8. I have heard Learned Counsel appearing for the Parties and perused the record to assess the correctness of the impugned judgment of the conviction. I have also gone through the statements of the witnesses minutely.
9. In her Court statement, the prosecutrix (PW-1) deposed that on the date of incident when she was returning to her home along with Laxmi (PW-2) and Mangli Bai (PW-4) from weekly market, the Appellants reached there and Appellant No. 1 caught and dragged her to nearby forest. When Laxmi (PW-2) and Mangli Bai (PW-4) tried to rescue her, Appellant Nos. 2 and 3 threatened them of dire consequences. Thereafter, first Appellant No. 1 committed rape upon her and after that Appellant Nos. 2 and 3 also did the same. Laxmi (PW-2) and Mangli Bai (PW-4) have duly corroborated the above statement of the prosecutrix (PW-1). According to the medical report (Ex.P-2) of the prosecutrix, forcible sexual intercourse was committed with her and three abrasions over her back and two abrasions over her forearm were also found. The prosecutrix (PW-1), Laxmi (PW-2) and Mangli Bai (PW-4) remained firm during their cross-examination. Medical report (Ex.P-2) of the prosecutrix also shows that forcible sexual intercourse was committed with her. Thus, from the evidence adduced by the prosecution, it is well established that on the date of incident,

Appellant No. 1 Mangal Sai and two other persons had committed rape with the prosecutrix.

10. Now, the only question left is whether the two other persons who committed forcible sexual intercourse with the prosecutrix along with Appellant no. 1 Mangal Sai, are Appellant Nos. 2 and 3 namely Firangraj and Chandulal?

11. In FIR (Ex. P-3), name of Appellant Nos. 2 and 3 are not mentioned. Both Appellant Nos. 2 and 3 were identified by the prosecutrix. G.R. Kulhara (PW-5) Tehsildar, before whom the TIP was conducted, in his Court statement, has categorically stated that when the police brought Appellant Nos. 2 and 3 before him at that time they were in covered (*Baparda*) condition. This witness during his cross-examination has admitted the fact that when police brought Appellant Nos. 2 and 3 before him at that time the prosecutrix was already sitting in verandah of his Court. The prosecutrix (PW-1) has admitted the fact that she along with Appellant Nos. 2 and 3 were brought together to the Court of G.R. Kulhara (PW-5) Tehsildar from Police Station. From the statement of G.R. Kulhara (PW-5) Tehsildar, it is well established that at the time of TIP Appellant Nos. 2 and 3 were brought before him in covered (*Baparda*) condition. Though, as admitted by the prosecutrix (PW-1), she and Appellant Nos. 2 and 3 were brought together from Police Station to the Court of the Tehsildar, at that time faces of Appellant Nos. 2 and 3 could be opened and the prosecutrix could have seen their faces neither such suggestion was put before the prosecutrix in her examination nor any material available on record regarding this point. Therefore, I do not find any substance in the argument advanced by learned Counsel for the Appellants in this

regard. Apart from that, prosecutrix (PW-1) and Laxmi (PW-2) both have also identified Appellant Nos 2 and 3 at the time of recording their statement before the Court. Looking to the entire evidence adduced by the prosecution, it is well established that the Appellant Nos. 2 and 3 are the said two other persons who committed rape along with Appellant No. 1 Mangal Sai.

12. Looking to the entire evidence adduced by the prosecution, in my considered view, the Trial Court has rightly convicted the Appellants.
13. Consequently, the appeal has no merit and the same is liable to be and is hereby dismissed.

Sd/-
(Arvind Singh Chandel)
Judge